

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed December 20, 2006.

1. Response to Rejection of Claims under 35 U.S.C. §112, Second Paragraph

Claims 1-24 have been rejected under 35 U.S.C. §112, Second Paragraph as allegedly being indefinite.

In particular claims 1-2 and 8-11 have been rejected on antecedent basis grounds. To address the Examiner's concern, independent claim 1 (from which claims 2 and 8-11 depend) has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejection is respectfully requested.

Claims 4-5 have been rejected for allegedly being indefinite for not including additional limitations. In response, Applicant respectfully submits that the limitations recited in the claim are definite and this does not appear to be in dispute by the Examiner. Rather, the Office Action indicates that additional limitations should be added to the claims to narrow the scope of the claims. However, it is respectfully submitted that the Applicant is not required to state all the possible alternatives that may be embodied in a particular implementation, such as "what the scope of the claim includes if the other branch of the alternative does not occur," as requested in the Office Action. Accordingly, withdrawal of the rejections is respectfully requested.

Claim 6 has been rejected on antecedent basis grounds. To address this concern, claim 6 has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejection is respectfully requested.

Claim 7 has been rejected on antecedent basis grounds. To address this concern, claim 7 has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejection is respectfully requested.

Claims 12-13, 15-16, and 19-21 have been rejected on antecedent basis grounds. To address this concern, independent claim 12 (from which claims 13, 15-16, and 19-21 depend) has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejections is respectfully requested.

Claim 14 has been rejected for allegedly being indefinite for not including additional limitations. In response, Applicant respectfully submits that the limitations recited in the claim are definite and this does not appear to be in dispute by the Examiner. Rather, the Office Action indicates that additional limitations should be added to the claims to narrow the scope of the claims. However, it is respectfully submitted that the Applicant is not required to state all the possible alternatives that may be embodied in a particular implementation, such as "what the scope of the claim includes if the other branch of the alternative does not occur," as requested in the Office Action. Accordingly, withdrawal of the rejections is respectfully requested.

Claim 17 has been rejected on antecedent basis grounds. To address this concern, claim 17 has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejection is respectfully requested.

Claim 18 has been rejected on antecedent basis grounds. To address this concern, claim 18 has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejection is respectfully requested.

Claim 22 has been rejected on antecedent basis grounds. Claim 22 has been canceled and therefore, the rejection is rendered moot.

Claim 23 has been rejected on antecedent basis grounds. To address this concern, claim 23 has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejection is respectfully requested.

Claim 24 has been rejected on antecedent basis grounds. To address this concern, claim 24 has been amended to provide proper antecedent basis. Therefore, withdrawal of the rejection is respectfully requested.

2. Response to Rejection of Claims Under 35 U.S.C. §101

Claims 1-2 and 4-22 have been rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. In response, independent claim 1 has been amended to include the useful, concrete, and tangible result of providing more or less of a commodity to a customer which is statutory subject matter, as acknowledged in the Office Action. Page 6. Therefore, withdrawal of the rejections of claim 1 and claims 2 & 4-11 (which depend there from) is respectfully requested.

Claims 12-21 have been rejected for being directed to a computer program. To advance prosecution, claims 12-21 have been amended to cover a computer readable medium which is patentable subject matter. For example, the Patent Office Guidelines recite that "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the

computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035." See <http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>. Therefore, withdrawal of the rejection is respectfully requested.

Claims 12-13 and 15-21 have also been rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. In response, independent claim 12 has been amended to include the useful, concrete, and tangible result of providing more or less of a commodity to a customer which is statutory subject matter, as acknowledged in the Office Action. Page 7. Therefore, withdrawal of the rejections of claims 12 and claims 13 & 15-21 (which depend there from) is respectfully requested.

Claim 22 has been rejected for allegedly being directed to a non-statutory subject mater. However, claim 22 has been canceled, and therefore, the rejection is rendered moot.

3. Response to Rejection of Claims Under 35 U.S.C. §103(a)

In the Office Action, claims 1-7, 11-18, and 22-24 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Takriti* (U.S. Patent No. 6,021,402) in view of *Pitchford* (U.S. Patent No. 6,327,541). Claims 8-10 and 19-21 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Takriti* (U.S. Patent No. 6,021,402) in view of *Pitchford* (U.S. Patent No. 6,327,541) in further view of Official Notice.

It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either

implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Independent Claim 1

As presented in independent claim 1, Applicant claims:

A method of determining a price at which a supplier provides a commodity to a customer, the method being performed by the supplier and comprising:

- (a) *characterising nature of growth of the customer's usage of the commodity;*
- (b) *receiving information from the customer specifying the commodity required;*
- (c) *receiving notification of the use of a quantity of the commodity by the customer; and*
- (d) *determining a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer.*

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Takriti* in view of *Pitchford* does not disclose, teach, or suggest at least "(a) characterising nature of growth of the customer's usage of the commodity; (b) receiving information from the customer specifying the commodity required; (c) receiving notification of the use of a quantity of the commodity by the customer; and (d) determining a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the

commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer," as recited in claim 1.

For example, *Takriti* describes a risk-management system that provides a tool that generates multiple load forecasts and allows a plant manager to vary a fuel price between different scenarios. See abstract and summary. Accordingly, "each plant manager is given precisely what type of fuel to use and how much to burn at each hour of the week" as an output of the system, where "[t]he output of the tool 111 is the fuel consumption, fuel mix, and generation requirement to each of a plurality of generating plants 121 to 12n which are connected to transmission lines 13 for delivery of electrical power to customers 141 to 14m and to other utilities 15. The inputs and output of the risk management system 111 are illustrated in FIG. 3 in the form of spreadsheets." Col. 6, lines 11-17 and col. 8, lines 47-50.

From the above and the exemplary spreadsheets shown in FIG. 3, it is noted that an input of a particular or individual consumer of the fuel being supplied is not part of the *Takriti* system. Rather, inputs on fuel prices and generating units are received by the risk management system in *Takriti* in order to determine a type of fuel to use and an amount to burn for a particular fuel generating unit. Accordingly, *Takriti* fails to teach or suggest at least "(a) characterising nature of growth of the customer's usage of the commodity; (b) receiving information from the customer specifying the commodity required; (c) receiving notification of the use of a quantity of the commodity by the customer; and (d) determining a price for the commodity used, the

determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer," as recited in claim 1.

With regard to *Pitchford*, it describes an electronic energy management system that provides energy usage data to customers. As such, *Pitchford* fails to cure the deficiencies of the *Takrili* reference in suggesting or teaching all of the features in claim 1. For example, *Pitchford* is legally inadequate to disclose "(a) characterising nature of growth of the customer's usage of the commodity; (b) receiving information from the customer specifying the commodity required; (c) receiving notification of the use of a quantity of the commodity by the customer; and (d) determining a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer," as recited in claim 1.

For at least these reasons, claim 1 is not obvious under the proposed combination, and the rejection should be withdrawn.

b. Claims 2-11

Because independent claim 1 is allowable over the cited art of record, dependent claims 2 and 4-11 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 2 and 4-11 contain all the features of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

As an example, *Takriti* fails to teach or suggest that nature of growth of usage of a commodity by a customer is characterized and a level of commercial risk for the customer is determined, as described in claim 5. Likewise, *Pitchford* fails to cure the deficiencies of the *Takriti* reference in suggesting or teaching all of the features in claim 5.

Also with regard to the rejection of claim 5, Applicant respectfully traverses the statement in the Office Action that characterizations of growth and determinations of levels of commercial risk are non-functional descriptive material. See pages 10-11. Rather, characterizations of growth and determinations of levels of commercial risk are requisite to performing one or more embodiments to determine a price for a commodity.

As an additional example, the proposed combination of *Takriti* fails to teach or suggest that a customer selects or specifies a commodity as input to the claimed system, as described in claim 6. Likewise, *Pitchford* fails to cure the deficiencies of the *Takriti* reference in suggesting or teaching all of the features in claim 6.

Claims 8-10 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable by *Takriti* in view of *Pitchford* in further view of Official Notice.

With respect to claim 8, the Office Action states that "it is old and well established that the information technology industry uses various commodities, such as power and processor availability." Page 20. Per claims 9 and 10, the Office Action states that "it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service." Page 21. Per claim 10, the Office Action states that "it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service." Page 21.

Applicant respectfully traverses each of the findings of Official Notice. In particular, a specific or particular reason why the finding of Official Notice is improper is that the claims 8-10 describe methods, having various features, for determining a price for a commodity for a customer based upon input received from the customer, and it has not been established that these features are capable of instant and unquestionable demonstration as being well-known within the context of the claimed subject matter. As one example, among others, it has not been established that "determining the price of commoditized solution elements in the information technology industry," as recited in claim 8, is well known within the context of the described method of claim 8 (which includes all the features of the base claims of claim 8).

Per MPEP 2144.03(A), "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." Also, per MPEP 2144.03(B), "If such notice is taken, the basis for such reasoning must be set forth explicitly. The

Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge."

As specific factual findings predicated on sound technical and scientific reasoning in support of the conclusion of common knowledge are not provided in the Office Action, the Official Notice and the rejections based upon this finding should be withdrawn. Further, under 37 CFR § 1.104(d)(2), if the rejections are based on facts within the personal knowledge of the examiner, "the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons." Therefore, if this rejection is maintained, Applicant respectfully requests that document(s) be provided as support.

Claim 3 is canceled without prejudice, waiver, or disclaimer, and therefore, the rejection to the claim is rendered moot. Applicant takes this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of the canceled claim in a continuing application, if Applicant so chooses, and does not intend to dedicate any of the canceled subject matter to the public.

c. Independent Claim 12

As presented in independent claim 12, Applicant claims:

A computer-readable storage medium for storing a computer program operable, when executed by a computer, to

determine a price at which a supplier provides a commodity to a customer, the computer program being operable to:

- (a) receive input characterising nature of growth of the customer's usage of the commodity;
- (b) receive input specifying the commodity required by the customer;
- (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and
- (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer.

Applicant respectfully submits that independent claim 12 is allowable for at least the reason that *Takriti* in view of *Pitchford* does not disclose, teach, or suggest at least to "(a) receive input characterising nature of growth of the customer's usage of the commodity; (b) receive input specifying the commodity required by the customer; (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer," as recited in claim 12.

For example, *Takriti* describes a risk-management system that provides a tool that generates multiple load forecasts and allows a plant manager to

vary a fuel price between different scenarios. See abstract and summary. Accordingly, "each plant manager is given precisely what type of fuel to use and how much to burn at each hour of the week" as an output to the system, where "[t]he output of the tool 111 is the fuel consumption, fuel mix, and generation requirement to each of a plurality of generating plants 121 to 12n which are connected to transmission lines 13 for delivery of electrical power to customers 141 to 14m and to other utilities 15. The inputs and output of the risk management system 111 are illustrated in FIG. 3 in the form of spreadsheets." Col. 6, lines 11-17 and col. 8, lines 47-50.

From the above and the exemplary spreadsheets shown in FIG. 3, it is noted that an input of a particular or individual consumer of the fuel being supplied is not part of the *Takriti* system. Rather, inputs on fuel prices and generating units are received by the risk management system in *Takriti* in order to determine a type of fuel to use and an amount to burn for a particular fuel generating unit. Accordingly, *Takriti* fails to teach or suggest at least to "(a) receive input characterising nature of growth of the customer's usage of the commodity; (b) receive input specifying the commodity required by the customer; (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect

provision of more or less of the commodity from the supplier to the customer," as recited in claim 12.

With regard to *Pitchford*, it describes an electronic energy management system that provides energy usage data to customers. As such, *Pitchford* fails to cure the deficiencies of the *Takriti* reference in suggesting or teaching all of the features in claim 12. For example, *Pitchford* is legally inadequate in disclosing to "(a) receive input characterising nature of growth of the customer's usage of the commodity; (b) receive input specifying the commodity required by the customer; (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer," as recited in claim 12.

For at least these reasons, claim 12 is not obvious under the proposed combination, and the rejection should be withdrawn.

d. Claims 13-21

Because independent claim 12 is allowable over the cited art of record, dependent claims 13 and 15-21 (which depend from independent claim 12) are allowable as a matter of law for at least the reason that the dependent claims 13 and 15-21 contain all the features of independent claim 12. See, e.g., *In re*

Fine, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

As an example, *Takriti* fails to teach or suggest that nature of growth of usage of a commodity by a customer is characterized and a level of commercial risk for the customer is determined, as described in claim 16. Likewise, *Pitchford* fails to cure the deficiencies of the *Takriti* reference in suggesting or teaching all of the features in claim 16.

Also with regard to the rejection of claim 16, Applicant respectfully traverses the statement in the Office Action that characterizations of growth and determinations of levels of commercial risk are non-functional descriptive material. See page 15. Rather, characterizations of growth and determinations of levels of commercial risk are requisite to performing one or more embodiments to determine a price for a commodity.

As an additional example, the *Takriti* fails to teach or suggest that a customer selects or specifies a commodity as input to the claimed system, as described in claim 17. Likewise, *Pitchford* fails to cure the deficiencies of the *Takriti* reference in suggesting or teaching all of the features in claim 17.

Claims 19-21 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable by *Takriti* in view of *Pitchford* in further view of Official Notice. With respect to claim 19, the Office Action states that "it is old and well established that the information technology industry uses various commodities, such as power and processor availability." Pages 22-23. Per claim 20, the Office Action states that "it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service." Page 23. Per claim 21,

the Office Action states that "it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service." Page 23.

Applicant respectfully traverses each of the findings of Official Notice. In particular, a specific or particular reason why the finding of Official Notice is improper is that the claims 19-21 describe a determination of a price for a commodity for a customer based upon input received from the customer, and it has not been established that the features that are recited in claims 19-21 are capable of instant and unquestionable demonstration as being well-known within the context of the claimed subject matter of the base claims, as previously mentioned.

Claim 14 is canceled without prejudice, waiver, or disclaimer, and therefore, the rejection to the claim is rendered moot. Applicant takes this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of the canceled claim in a continuing application, if Applicant so chooses, and does not intend to dedicate any of the canceled subject matter to the public.

e. Independent Claim 22

Claim 22 is canceled without prejudice, waiver, or disclaimer, and therefore, the rejection to the claim is rendered moot. Applicant takes this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of the canceled claim in a

continuing application, if Applicant so chooses, and does not intend to dedicate any of the canceled subject matter to the public.

f. Independent Claim 23

As presented in independent claim 23, Applicant claims:

A price determination device comprising a processor operable to implement a method of determining a price at which a supplier provides a commodity to a customer, the method comprising:

- (a) *characterising nature of growth of the customer's usage of the commodity;*
- (b) *receiving information from the customer specifying the commodity required;*
- (c) *receiving notification of the use of a quantity of the commodity by the customer; and*
- (d) *determining a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price.*

Applicant respectfully submits that independent claim 23 is allowable for at least the reason that *Takiti* in view of *Pitchford* does not disclose, teach, or suggest at least "(a) characterising nature of growth of the customer's usage of the commodity; (b) receiving information from the customer specifying the commodity required; (c) receiving notification of the use of a quantity of the commodity by the customer; and (d) determining a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price," as recited in claim 23.

For example, *Takriti* describes a risk-management system that provides a tool that generates multiple load forecasts and allows a plant manager to vary a fuel price between different scenarios. See abstract and summary. Accordingly, "each plant manager is given precisely what type of fuel to use and how much to burn at each hour of the week" as an output of the system, where "[t]he output of the tool 111 is the fuel consumption, fuel mix, and generation requirement to each of a plurality of generating plants 121 to 12n which are connected to transmission lines 13 for delivery of electrical power to customers 141 to 14m and to other utilities 15. The inputs and output of the risk management system 111 are illustrated in FIG. 3 in the form of spreadsheets." Col. 6, lines 11-17 and col. 8, lines 47-50.

From the above and the exemplary spreadsheets shown in FIG. 3, it is noted that an input of a particular or individual consumer of the fuel being supplied is not part of the *Takriti* system. Rather, inputs on fuel prices and generating units are received by the risk management system in *Takriti* in order to determine a type of fuel to use and an amount to burn for a particular fuel generating unit. Accordingly, *Takriti* fails to teach or suggest at least "(a) characterising nature of growth of the customer's usage of the commodity; (b) receiving information from the customer specifying the commodity required; (c) receiving notification of the use of a quantity of the commodity by the customer; and (d) determining a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price," as recited in claim 23.

With regard to *Pitchford*, it describes an electronic energy management system that provides energy usage data to customers. As such, *Pitchford* fails to cure the deficiencies of the *Takriti* reference in suggesting or teaching all of the features in claim 23. For example, *Pitchford* is legally inadequate to disclose "(a) characterising nature of growth of the customer's usage of the commodity; (b) receiving information from the customer specifying the commodity required; (c) receiving notification of the use of a quantity of the commodity by the customer; and (d) determining a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price," as recited in claim 23.

For at least these reasons, claim 23 is not obvious under the proposed combination, and the rejection should be withdrawn.

g. Independent Claim 24

As presented in independent claim 24, Applicant claims:

A price determination device comprising a processor executing a program to determine a price at which a supplier provides a commodity to a customer, the program being operable to cause the processor to:

- (a) receive input characterising nature of growth of the customer's usage of the commodity;
- (b) receive input specifying the commodity required by the customer;
- (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and
- (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time.

Applicant respectfully submits that independent claim 24 is allowable for at least the reason that *Takriti* in view of *Pitchford* does not disclose, teach, or suggest at least to "(a) receive input characterising nature of growth of the customer's usage of the commodity; (b) receive input specifying the commodity required by the customer; (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time," as recited in claim 24.

For example, *Takriti* describes a risk-management system that provides a tool that generates multiple load forecasts and allows a plant manager to vary a fuel price between different scenarios. See abstract and summary. Accordingly, "each plant manager is given precisely what type of fuel to use and how much to burn at each hour of the week" as an output of the system, where "[t]he output of the tool 111 is the fuel consumption, fuel mix, and generation requirement to each of a plurality of generating plants 121 to 12n which are connected to transmission lines 13 for delivery of electrical power to customers 141 to 14m and to other utilities 15. The inputs and output of the risk management system 111 are illustrated in FIG. 3 in the form of spreadsheets." Col. 6, lines 11-17 and col. 8, lines 47-50.

From the above and the exemplary spreadsheets shown in FIG. 3, it is noted that an input of a particular or individual consumer of the fuel being supplied is not part of the *Takriti* system. Rather, inputs on fuel prices and generating units are received by the risk management system in *Takriti* in

order to determine a type of fuel to use and an amount to burn for a particular fuel generating unit. Accordingly, *Takriti* fails to teach or suggest at least to "(a) receive input characterising nature of growth of the customer's usage of the commodity; (b) receive input specifying the commodity required by the customer; (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time," as recited in claim 24.

With regard to *Pitchford*, it describes an electronic energy management system that provides energy usage data to customers. *Pitchford* fails to cure the deficiencies of the *Takriti* reference in suggesting or teaching all of the features in claim 24. For example, *Pitchford* is legally inadequate in disclosing to "(a) receive input characterising nature of growth of the customer's usage of the commodity; (b) receive input specifying the commodity required by the customer; (c) receive input comprising notification of the use of a quantity of the commodity by the customer; and (d) determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time," as recited in claim 24.

For at least these reasons, claim 24 is not obvious under the proposed combination, and the rejection should be withdrawn.

CONCLUSION

For at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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Reg. No. 47,283